

MEMORANDUM

TO: REF Attorneys

DATE: 10-9-85

FROM: Nancy Kramer  
Mary Sabatini DiStephan *MSD*

RE: Buy-Back Provisions in Offering Plans

Sponsors sometimes include buy-back provisions in offering plans. They are simply promises to purchase the sold apartment at some later time for a certain price (frequently the price at which the subscriber bought the apartment from the sponsor plus x percent).

A problem arises with buy-back provisions offered before a conversion goes effective. If they are exercisable immediately they can render the "purchase" simply a paper device to defeat the statutory requirement that a certain percentage of the units be purchased by tenants or by bona fide purchasers with the intention of occupying (or having a member of their immediate family occupy) the unit.

Therefore, our office's policy is to allow subscription or purchase agreements that contain buy-back provisions to "count" for the percentage requirements if and only if the buy-back provisions are not exercisable until 12 months or more after closing.

Subscription or purchase agreements signed after the effectiveness date are not so limited.

/va